

GAHC010137912020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/61/2020

DUKESWAR RABHA
S/O. SOBI RAM RABHA, VILL. NAMDANI MODATI, P.S. KAZIGAON, DIST.
KOKRAJHAR.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MS. M BARMAN, AMICUS CURIAE

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR
HON'BLE MR. JUSTICE KARDAK ETE

26.05.2023

ORDER

(Lanusungkum Jamir, J.)

Heard Ms. M. Barman, learned *amicus curiae*. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor, Assam.

2. This appeal is directed against the judgment dated 04.10.2019 passed by the learned Additional Sessions Judge (FTC), Kokrajhar in Sessions Case No.216/2017 under Sections 302/201 IPC whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/- and in default to suffer further imprisonment for 1 (one) year under Section 302 IPC and also to undergo seven years imprisonment with fine of

Rs.5,000/- and in default to suffer further imprisonment for 6 (six) months under Section 201 IPC.

3. During the course of argument and while appreciating the evidences, we find that PW1, Trinath Rabha, who is the informant, stated that the accused/appellant himself led the police team to the place where the dead body was buried. Further, he stated that a village meeting was called in which the accused/appellant admitted that he suspected the deceased Suresh Chandra Rabha of practicing witchcraft and accordingly he had murdered him in the mountain.

4. PW2 also stated that the accused/appellant admitted in front of the villagers that he killed Suresh Chandra Rabha because of previous enmity and he had buried the body near the mountain. Same is the deposition of PW3, PW4 and PW5.

5. Surprisingly, we find that the I/O of the case was not examined by the prosecution.

6. Consideration of the evidence of PW1 would clearly indicate that the accused/appellant had led the police to the place where the dead body was buried. Thereafter, on recovery, *inquest* was performed by the Executive Magistrate, Parbotjhora, Kazigaon. *Post mortem* was also conducted and chemical analysis was sent to the Director of Forensic Science Laboratory, Kahilipara.

7. We find that the Medical Officer, who conducted the *post mortem*, the person, who conducted the FSL test as well as the Magistrate, who performed the *inquest*, were not examined.

8. Accordingly, we find that additional evidence is required for coming to a just conclusion to see that justice is done between the prosecutor and also the

person prosecuted against.

9. In that view of the matter, we direct the learned Additional Sessions Judge (FTC), Kokrajhar to take further evidence of the I/O concerned, the Medical Officer, the Executive Magistrate, who performed the *inquest* and also the officer, who performed the FSL test for coming to a just conclusion in the matter.

The accused/appellant may also be permitted to adduce evidence, if he so desires.

10. Let such examination of witnesses as directed here-in-above be completed within a period of three months from the date of receipt of the LCRs and thereafter pronounce a fresh judgment.

11. Consequently, the judgment dated 04.10.2019 passed by the learned Additional Sessions Judge (FTC), Kokrajhar in Sessions Case No.216/2017 under Sections 302/201 IPC is set aside. However, we make it clear that by setting aside the judgment dated 04.10.2019 the trial Court should not assume that the judgment is wrong.

12. Registry is directed to send back the LCRs forthwith to the Court of learned Additional Sessions Judge (FTC), Kokrajhar.

13. We record our appreciation to the learned *amicus curiae* for ably assisting the Court and she shall be entitled to remuneration, which shall be determined by the Assam State Legal Services Authority.

14. The appeal is, accordingly, disposed of.

JUDGE

JUDGE